

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ZENAIDA HERNANDEZ,

Plaintiff,

v.

MARIA E. MONTANEZ, MARK A. VERDINI,
JONATHAN W. THOMAS, CARLOS M.
GODEN, JR, and JANE DOE,
Defendants.

Civil Action No. 12-11062- FDS

**LEAVE TO FILE GRANTED ON
APRIL 5, 2013**

**PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION TO COMPEL**

Plaintiff submits five points in reply:

1. In response to Plaintiffs' motion to compel, Defendants agree for the first time to produce the documents referenced in Interrogatory 15 and on which Defendants Verdini and Thomas relied in deciding to strip search Plaintiff.¹ Defendants state that they are willing to provide responsive documents "subject to the terms" of their proposed protective order. For the reasons discussed in Plaintiff's Reply regarding the protective order [Document #26], Plaintiff opposes having these documents be subject to a protective order that redacts crucial information and limits Plaintiff's ability to use relevant facts to prepare her case. Defendants should be ordered to produce these documents subject to the terms of Plaintiff's proposed protective order.

2. Defendants are willing to produce a daily shift roster with only the names of officers on sick leave or industrial accident leave redacted. Plaintiff accepts this compromise, which resolves Plaintiff's motion with respect to Document Request 2.

¹ Defendants do not address Plaintiff's request that Defendants Verdini and Thomas supplement their answers to Interrogatory 15 to identify each and every fact on which they relied in deciding to strip search Plaintiff. In light of their willingness to provide responsive documents, however, it appears that Defendants have withdrawn any objection to providing a supplemental response to Interrogatory 15. Plaintiff still seeks an order compelling a supplemental response to this interrogatory from Defendants Verdini and Thomas.

3. Defendants raise CORI and FIPA objections with respect to Document Requests 6 and 8. The objections based on CORI should be disregarded, since any concerns in this regard are resolved by Plaintiff's motion for access to CORI material. *See* Document #16. Defendants' FIPA argument relies on a state administrative decision regarding the relationship between FIPA and public records requests. This is discovery in a federal civil rights lawsuit, not a public records dispute. In any event, Defendants misapply the statute because any privacy concerns can be addressed through entry of a protective order. *See, e.g., Notice v. DuBois* 187 F.R.D. 19, 23 n.5 (D. Mass. 1999).

4. Document Request 9 seeks all documents relating to any altercation involving Mr. Jackson while he has been incarcerated at Souza-Baranowski Correctional Center. Defendants agree for the first time in their opposition to produce documents relating to Mr. Jackson's altercation the day before Plaintiff's visit. Defendants also agree for the first time to produce documents "that demonstrate that it was appropriate to request approval to strip search Plaintiff." *Defts.' Opp'n* at 11. Although a step in the right direction, Defendants should not be permitted to produce only those documents that support their position that "it was appropriate" to strip search Plaintiff. They should be required to produce all documents responsive to Plaintiff's request.

5. Though not addressed in this reply, Plaintiff's Interrogatories 1, 3 and 4 regarding Defendants' background information, as addressed in Plaintiff's initial memorandum [Document #19], remain in dispute.

RESPECTFULLY SUBMITTED,

For Plaintiff Zenaida Hernandez
By her attorneys,

/s/ Drew Glassroth

Howard Friedman, BBO #180080

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Dated: April 5, 2013

CERTIFICATE OF SERVICE

I certify that on this day a true copy of the above document was served upon the attorney of record for each party via ECF.

Date: April 5, 2013

/s/ Drew Glassroth
Drew Glassroth